

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of License 2522 (Application 9231)

Bernard A. Hammond

ORDER REVOKING LICENSE

SOURCE: Pear Tree Gulch

COUNTY: Trinity

WHEREAS:

The facts and conclusions upon which the proposed revocation is based are as follows:

1. The State Water Resources Control Board (State Water Board) issued License 2522 on December 21, 1942 to Mrs. Esther Stuart for mining and domestic purposes at a maximum diversion rate of one cubic foot per second (cfs) from February 1 to April 30 of each year for mining purposes and January 1 to December 31 of each year for domestic purposes. The license was changed pursuant to a State Water Board Order dated October 1, 1962 to 500 gallons per day (gpd) for domestic use and the point of diversion was relocated downstream from the original location.
2. The license was assigned to William A. Hammond in 1973. The triennial Report of Licensee for 1973, 1974, and 1975 was returned as undeliverable by the U.S. Post Office. The Division of Water Rights' (Division) records were corrected to show Bernard A. Hammond (Licensee) as the owner of License 2522.
3. The Licensee reported in the 1976, 1977 and 1978 triennial Report of Licensee that his mining claim had been "jumped" and he was unable to make use of the water.
4. License 2522 requires that reports shall be filed promptly by the Licensee when provided by the Division. The last Report of Licensee (Report) was filed on April 1, 1995 for the 1992 to 1994 period. Since then, the Licensee has not filed any Reports.
5. The Division has no record to show that water has been diverted under License 2522 since 1994. The last Report filed by the Licensee states that an unknown amount of water was used. It appears, however, that the Licensee did not use any water because the 1992 to 1994 Report states "I failed to do my assessment work on my mining claim and it was jumped." In the Report for 1976 to 1978 filed December 27, 1978, he stated that his mining claim had been ["jumped"] and he was unable to make use of the water. It is not clear whether the Licensee has used any water since 1976.

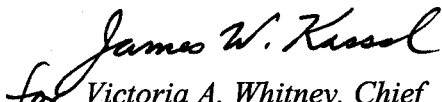
6. The Licensee reported in a telephone conversation with Division staff on March 16, 2000 that he no longer owned the property where the water right was in use and would like the license revoked. Division staff has since determined that the place of use is on land owned by the U.S. Bureau of Land Management (BLM). The Division sent a letter dated March 20, 2000 to the Licensee following up on his request for revocation. The Division's letter requested that the Licensee complete a "Request for Revocation" form. The Licensee returned the "Request for Revocation" form dated March 31, 2000 to the Division stating he did not wish to revoke the license.
7. The Licensee submitted an "Assignment or Address Change" form received by the Division on October 20, 2003, stating he no longer owned the property and no longer wanted to maintain the license. Division staff spoke with the Licensee on January 2, 2004, and Mr. Hammond stated his mining claim was jumped and he was not interested in furnishing the name of the new owner or signing a Request for Revocation form.
8. Division staff discussed the status of this project with Mr. Joe Molter of BLM on June 17, 2004. He confirmed that the Hammond cabin is abandoned and Mr. Hammond does not have a special use permit authorizing access to the point of diversion on federal land.
9. Mr. Molter also stated that if the Hammond cabin is still there and occupied, BLM would evict the occupants because BLM does not allow dwellings on mining claims. Mr. Molter also said that BLM does not want to maintain the water right.
10. Licensee was provided notice by certified mail of the proposed revocation on March 4, 2005. The notice provided the Licensee the opportunity to object to the proposed revocation and request a hearing.

Based on the above facts, the Division of Water Rights concludes that:

1. Licensee has failed to observe the terms and conditions of License 2522.
2. Licensee has not applied the water to beneficial use for more than five consecutive years.
3. Licensee did not submit a request for a hearing to the Division.

Therefore, it is ordered that License 2522 is hereby revoked by the State Water Board pursuant to Water Code section 1675, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney, Chief
Division of Water Rights

Dated:

JUL 20 2005

ORDER

APPLICATION 9231PERMIT 5274LICENSE 2522

ORDER ALLOWING CORRECTION OF NAME OF SOURCE,
REDUCTION IN THE AMOUNT OF WATER TO BE AP-
PROPRIATED, CHANGE IN POINT OF DIVERSION AND
CHANGE IN CHARACTER OF USE.

WHEREAS License 2522 was issued to Esther Stuart and was filed with the County Recorder of Trinity County on December 30, 1942, and

WHEREAS the State Water Rights Board has found that the source of the appropriation under said License 2522 is incorrectly designated as Price Gulch, and

WHEREAS upon an investigation by the State Water Rights Board, it appears that the licensee has ceased to put to beneficial use the entire amount of water for which license number 2522 was granted, and

WHEREAS the licensee has made a formal request that the amount of water granted by the license be reduced to five hundred (500) gallons per day which is the maximum amount actually put to beneficial use during any one of the last three years, and

WHEREAS the State Water Rights Board has found that the change in point of diversion and character of use under said license for which petition was submitted on July 30, 1962, will not operate to the injury of any other legal user of water, and

WHEREAS the Board has approved and allowed said changes and has directed that an order be issued to describe said changes in accordance with said petition;

NOW THEREFORE IT IS ORDERED that the source of the appropriation be designated as follows, to wit:

PEAR TREE GULCH IN TRINITY COUNTY, TRIBUTARY TO TRINITY RIVER, and

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

ORDER

APPLICATION 9231

PERMIT 5274

LICENSE 2522

IT IS FURTHER ORDERED that the said license be and the same is hereby amended by reducing the amount of the appropriation from one (1) cubic foot per second to five hundred (500) gallons per day and the remaining portion is hereby declared unappropriated and open to further appropriation, and

IT IS FURTHER ORDERED that permission be and the same is hereby granted to change the point of diversion under said License 2522 to point of diversion described as follows, to wit:

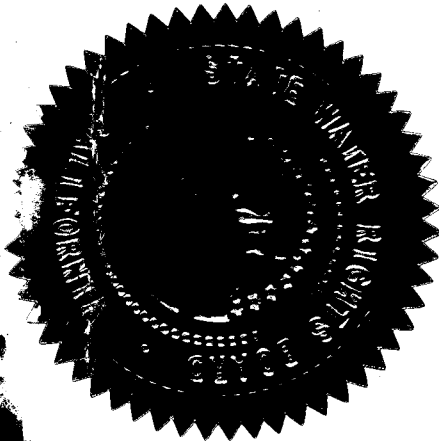
NORTH EIGHTY DEGREES WEST (N 80° W), TWO THOUSAND (2000) FEET FROM SE CORNER OF SECTION 28, T34N, R11W, MDB&M, BEING WITHIN SW $\frac{1}{4}$ OF SE $\frac{1}{4}$ OF SAID SECTION 28.

IT IS FURTHER ORDERED that permission be and the same is hereby granted to change the character of use under said License 2522 to character of use as follows, to wit:

DOMESTIC USE.

WITNESS my hand and the seal of the State Water Rights Board of the State of California this 1st day of October, 1962

L. K. Hill
L. K. Hill
Executive Officer



1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861.

2. The second part of the document is a report from the Secretary of the Treasury, dated January 1, 1861.

3. The third part of the document is a report from the Secretary of the Interior, dated January 1, 1861.

4. The fourth part of the document is a report from the Secretary of the Navy, dated January 1, 1861.

5. The fifth part of the document is a report from the Secretary of the War, dated January 1, 1861.

6. The sixth part of the document is a report from the Secretary of the State, dated January 1, 1861.

7. The seventh part of the document is a report from the Secretary of the War, dated January 1, 1861.

8. The eighth part of the document is a report from the Secretary of the Navy, dated January 1, 1861.

9. The ninth part of the document is a report from the Secretary of the Interior, dated January 1, 1861.

10. The tenth part of the document is a report from the Secretary of the Treasury, dated January 1, 1861.

11. The eleventh part of the document is a report from the Secretary of the War, dated January 1, 1861.

12. The twelfth part of the document is a report from the Secretary of the Navy, dated January 1, 1861.

13. The thirteenth part of the document is a report from the Secretary of the Interior, dated January 1, 1861.

14. The fourteenth part of the document is a report from the Secretary of the Treasury, dated January 1, 1861.

15. The fifteenth part of the document is a report from the Secretary of the War, dated January 1, 1861.

16. The sixteenth part of the document is a report from the Secretary of the Navy, dated January 1, 1861.

17. The seventeenth part of the document is a report from the Secretary of the Interior, dated January 1, 1861.

18. The eighteenth part of the document is a report from the Secretary of the Treasury, dated January 1, 1861.

19. The nineteenth part of the document is a report from the Secretary of the War, dated January 1, 1861.

20. The twentieth part of the document is a report from the Secretary of the Navy, dated January 1, 1861.



STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

License for Diversion and Use of Water

LICENSE 2522

PERMIT 5274

APPLICATION 9231

THIS IS TO CERTIFY, That **Mrs. Esther Stuart**
140 Maddux Avenue
San Francisco, California

Notice of Change (Over)

has made proof to the satisfaction of the Division
of Water Resources of California of a right to the use of the waters of **Price Gulch in Trinity County**

tributary of **Trinity River**

for the purpose of **mining and domestic uses**
under Permit **5274** of the Division of Water Resources and that said right to the use of said waters has
been perfected in accordance with the laws of California, the rules and regulations of the Division of Water Resources
and the terms of the said permit; that the priority of the right herein confirmed dates from **February 4, 1938;**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited
to the amount actually beneficially used for said purposes and shall not exceed **one (1) cubic foot per**
second from about February 1 to about April 30 of each season and throughout
the remainder of the year as required for domestic use.

The point of diversion of such water is located **North sixty-three degrees, fifty-four**
minutes East (N. 63° 54' E.) twenty-three hundred ninety-six (2396) feet from the
Southwest corner of Section 28, T 34 N, R 11 W, M.D.B.&M., being within the SE¼
of SW¼ of said Section 28.

A description of the lands or the place where such water is put to beneficial use is as follows: **Mining and**
domestic use within the S¼ of SW¼ and SW¼ of SE¼ of Section 28, T 34 N, R 11 W,
M.D.B.&M.

Water after use for mining purposes will be returned to Trinity River within
the **NE¼ of NW¼ of Section 33, T 34 N, R 11 W, M.D.B.&M.**

All rights and privileges under this license including method of diversion, method of use and quantity of water
diverted are subject to the continuing authority of the Division of Water Resources in accordance with law and in the
interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of
diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from
time to time by the Division of Water Resources.

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of
diversion herein specified and to the lands or place of use herein described.

as the water actually appropriated under such licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have, the state or any city, city and county, occupied and used under said license, and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and be determined in eminent domain proceedings, it can not agree upon the state water commission at any time after a permit or license is issued as in this act provided that the permittee, or licensee, or the heir, successor, or assign, of said permittee or licensee, has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, or licensee, or the heir, successor or assign of such permittee or licensee, and a hearing thereon, may revoke said permit or license and declare the water to be, to be prima facie correct until modified or rescinded by a court of competent jurisdiction; *provided*, that any action brought to so modify or so rescind such finding And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent that no under the provisions of this act, or for any rights granted or acquired by any permittee or licensee, his heirs, successors or assigns or by the holder of any right granted or acquired under the provisions of this act, or be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any right or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the heir, successor or assign of any rights granted issued, or requested under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered and here in right, irrespective of whether they are first in time; *provided, however*, that such application for a permit or the granting thereafter of permission to any municipality or appropriate waters, shall not authorize the appropriation to any municipality for other than municipal purposes; and *providing, further*, that where any municipality or appropriate is granted by the state water commission the appropriation to any municipality for other than municipal purposes, that such appropriation, in the absence of such permitted appropriation over and above the quantity being applied from time to time by the commission to any municipality, shall be in lieu of the granting of such temporary permit for appropriation, the state water commission may authorize such municipality to become as to such permit a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; and *provided, further*, that when such municipality shall desire to use the additional water granted in its said application it may do so upon making just compensation for said facilities for taking, conveying and storing such additional water rendered valuable for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

EDWARD HYATT
State Engineer
By, Harold Conblum
Deputy

10-1-12 And allowing money
amount charged to Ben Tree
May



RECEIVED NOTICE OF ASSIGNMENT TO

3-24-76 Dept to Barrow A. Hammond

DIVISION OF WATER RESOURCES

**LICENSE
TO APPROPRIATE WATER**

ISSUED TO Mrs. Esther Stuart

DATED December 21, 1942